APPENDIX

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UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

Air Mail

March 10, 1959

Dear Mr. Hawkins:

The Department's press release of November 14, 1958 announced the notice of public hearing on the proposal to adopt amendments to existing regulations for the protection of commercial fisheries in Alaska, published in the Federal Register of November 14, 1958. As stated in the release, publication followed the decision on November 8 to propose elimination of all fish traps except those owned by Indian tribes or villages.

The proposal to eliminate fish traps in the pending regulations was motivated by the desire of the Department to adjust its actions as quickly as possible to the desires of the Alaskans in regard to the control of their natural resources. The people of Alaska twice voted in referendum to abolish traps.

As you know, under section 4 of the act of July 7, 1958 (72 Stat. 339) the State of Alaska disclaimed jurisdiction over any lands or other property, including fishing rights, held by any Indians, Eskimos, or Aleuts, or which is held by the United States in trust for them, and recognized continuing federal authority thereover. This disclaimer, coupled with the longstanding supervisory control exercised for the protection of the interests of Indians, Eskimos, and Aleuts by the Department of the Interior, accounts for the provision that the proposed regulations will not eliminate operation of fish traps by Indian tribes or villages. The Secretary will continue to control the operation of traps by Indian tribes and villages.

The Angoon Community Association, the Organized Village of Kake, and the Metlakatla Indian Community may proceed to make plans for operation of their salmon canneries in 1959 on the basis that they will be permitted to continue to operate the number of fish traps consistent with proper conservation practices recommended by this Department.

Sincerely yours,

/s/ ELMER F. BENNETT
Secretary of the Interior

MR. JAMES E. HAWKINS
Area Director,
Juneau, Alaska

Copy to Credit and to Solicitor

DEPARTMENT OF INTERIOR
OFFICE OF THE SECRETARY

TELETIPE

HON WILLIAM A EGAN
GOVERNOR OF ALASKA
JUNEAU ALASKA

MAY 29 1959

VIA PBX

SUPPLEMENTING MY LETTER OF MAY TWENTYEIGHT THE FOLLOWING TELEGRAM HAS TODAY BEEN SENT TO MAYOR LITTLEFIELD OF METLAKATLA Quote IN REPLY TO YOUR TELEGRAM OF MAY TWENTYSEVEN THE DEPARTMENT OF THE INTERIOR HAS NOT CHANGED ITS POSITION WITH RESPECT TO THE STATUS OF INDIAN OWNED FISH TRAPS. IT IS OUR VIEW THAT SECTION FOUR OF THE ALASKA STATEHOOD ACT RECOGNIZES AND PROTECTS INDIAN FISHING RIGHTS AND RESERVES ABSOLUTE JURISDICTION IN THE UNITED STATES OVER THEM UNTIL DISPOSED OF UNDER FEDERAL AUTHORITY. SECTIONS 102.10 AND 115.26 OF THE REVISED REGULATIONS FOR ALASKA COMMERCIAL FISHERIES FOR 1959 WERE ADOPTED IN CONFORMITY WITH EXISTING LAWS AND WE KNOW OF NO REASON TO AMEND OR MODIFY THESE SECTIONS WHICH NOW PERMIT OPERATION OF NATIVE INDIAN OWNED FISH TRAPS Unquote

WILL DISCUSS MATTER AT YOUR CONVENIENCE. PLEASE ADVISE

/S/ FRED A SEATON
SECRETARY OF THE INTERIOR

Excerpts From Brief for Appellee Seaton in Ketchikan Packing Co., v. Seaton, 267 F. 2d 660 (D.C. Cir. 1959), at pp. 26-27 (mimeo).

4. Ignoring the provisions of the Statehood Act and the entirely new situation it created, appellants attempt to equate the present case with that which was before the Supreme Court in *Hynes* v. *Grimes Packing Co.*, 337 U.S. 86 (1949). Having thus turned back the clock, they argue that the White Act's anti-discrimination proviso, as construed in *Hynes,* precludes the Secretary from permitting the use of fish traps on certain native Indian sites while banning their use elsewhere.

But by virtue of the Statehood Act Alaska is no longer a territory. As we have seen, that Act amended the White Act to require the Secretary to administer in the interests of Alaska all of its fish resources except where Indian fishing rights are involved. Section 4 of the Statehood Act made an exception for such rights, reserving them to the absolute jurisdiction and control of the United States. The Statehood Act thus created two different categories of fish resources to be administered under the amended White Act, where there previously had been one. Indian fishing rights, expressly placed beyond the reach of Alaska's Constitution, are to continue indefinitely under unfettered federal control.[3] In all other respects the new State's marine resources are to be administered by the Secretary merely for a transitional period and in accord-

[3] Historically, the government of the Territory of Alaska has acknowledged and recognized the unique status of these native fishing rights. In an opinion directed to the general Superintendent of the Alaska Native Service, dated July 26, 1949, the Attorney General of Alaska held that Section 35-1-11, ACLA 1949, as amended by Chapter 11, SLA 1949, the Alaska Fish Trap License Tax, was not applicable to the Metlakatla community of Indians on the Annette Island Reserve nor to any Indian chartered corporation. As a result, Alaska has not required a license for the Indian traps in question.

ance with the State Constitution approved in § 1 and made applicable to the White Act by §§ 6(e) and 8(d). In these circumstances it would be plainly absurd to construe the White Act's anti-discrimination proviso to invalidate measures applicable to one category of the Secretary's responsibilities on the ground that those measures have not also been applied to the other, wholly different category for which they are obviously inappropriate.

Rather than harmonize the two federal statutes, appellants' view of the White Act's anti-discrimination proviso would impale the Secretary on the horns of a dilemma. If he interprets the Westland proviso to avoid running afoul of the "equal footing" clause, they insist that he must also subject Indian fishing rights to Alaskan law contrary to § 4 or else violate the White Act proviso. On the other hand, if he permits Indians to maintain their fish traps as contemplated by § 4, appellants claim that the White Act proviso then requires him to permit fish traps generally in Alaska and thereby violate the "equal footing" clause. Nothing could more transparently demonstrate the fallacy of contending that Congress, in amending the White Act, intended the anti-discrimination proviso to apply in the same manner to the different situations created by §§ 4 and 6(e) of the Statehood Act.

Proposals for Regulating Commercial Fishing in Alaska to be Considered by the Alaska Board of Fish and Game at the November 1959 Meeting.

General authority for regulation: Section 6; 94, SLA 59 By Alaska Board of Fish and Game

101.1 Meaning of terms, abbreviations, and symbols.

For the purpose of these regulations the following shall be construed to mean:

. . .

(k) "Commercial fishing"—the taking, fishing for, or possession of fish, shellfish, or other fishery re-

sources with the intent of disposing of such fish, shellfish, or other fishery resources or parts thereof for profit, or by sale, barter, trade, or in commercial channels.

(*l*) "Commercial fisherman"—an individual who fishes commercially for, takes or attempts to take, fish, shellfish, or other fishery resources of Alaska by any means, and including every individual aboard boats operated for fishing purposes who participates directly or indirectly in the taking of the raw fishery products above mentioned, whether such participation be on shares or as employee or otherwise; Provided, however, this shall not apply to anyone aboard a licensed vessel merely as a visitor or guest who does not directly or indirectly participate in the said taking. The term "commercial fisherman" shall also include the crews of tenders or other floating craft used in transporting fish.

. . .

101.20 Waters of Alaska.

For the purpose of the regulations in this part, the term "waters of Alaska" north and west of the International Boundary at Dixon Entrance are defined as including those extending three miles seaward.

(a) From the coast.

(b) From lines extending from headland to headland across all bays, inlets, straits, passes, sounds and entrances.

(c) From an island or group of islands, including the islands of the Alexander Archipelago, and the waters between such groups of islands and the mainland.

. . .

102.1 Licenses required of commercial fishermen.

(a) All commercial fishermen, gear and vessels shall have all required licenses before fishing in any waters of Alaska.

. . .

102.2 Registration of fishing vessels and gear.

(a) Only vessels and gear registered with the local representative of the Department shall be used in commercial fishing in the area of intended operation. Registration, with the exception of salmon net fishing, may be done any time previous to commencing fishing.

. . .

102.10 Legal gear, salmon fishing.

Fishing for or taking salmon is permitted by drift gill nets, set nets, purse seines, hand purse seines, beach seines, fish wheels, trolling apparature, hand lines, rods, spears and gaffs.